IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 448 OF 2000

Pandurang Sadashiv Shinde..... ....Appellant.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Mr.T.E.Mane, Adv. for the appellant.

Mrs.U.V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

29.9.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by II Additional Sessions Judge, Pandharpur on 9.5.2000 in Sessions Case No.84 of 1998, the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The prosecution story as it emerges from our reappreciation of evidence stated briefly is that the accused and the victim are residents of village Dasur, Taluka Malshiras, District Solapur and they reside in Government zopadpatti. Seetabai is wife of the accused. There used to be frequent quarrels between them because the accused had extra marital relations with one Ratan. On 27.3.1998 in the morning around 8.30 there was quarrel between the accused and the deceased which ultimately led the accused pouring kerosene on the body of the deceased Seetabai and put her aflame and ran away. On hearing shouts neighbours gathered, extinguished the fire and admitted the victim to the hospital where she told the doctor the reason for burns as she was put on fire by the accused. Thereafter dying declaration of the victim was recorded by Sepcial Executive Magistrate and after completion of investigation the accused was prosecuted as aforesaid. The learned trial Judge examined as many as 11 witnesses and on the basis of appreciation of their evidence came to the conclusion that the accused was guilty of murder under section 302 and accordingly punished the accused as aforesaid. It is this order of conviction which is assailed before us by the learned advocate appearing on behalf of the appellant-accused on the grounds mentioned in the memo of appeal as also verbally canvassed before us. According to the learned counsel admittedly there was quarrel between the man and the wife and her declarations made before the police or the Special Executive Magistrate have several important contradictions because of which each statement becomes doubtful. There is no eye witness and therefore according to the learned counsel the evidence is inadequate to sustain the conviction. He therefore prayed for acquittal of the accused. The learned additional Public Prosecutor contested the claim and submitted that apart from the dying declarations which corroborate each other on

material particulars there is unequivocal testimony of the doctor and the Special Executive Magistrate who heard the patient saying that she was burnt by her husband. Certain technical and minor discrepancies in the dying declarations cannot be held sufficient to discard the dying declaration of a person. She therefore prayed for maintaining the order of conviction and the findings as recorded by the learned trial Judge.

4. P.W. 1 – Mahiboob Shaikh, P.W. 2 – Pandurang Shinde are the panchas who have turned hostile. P.W. 3 – Ratan Kakade is the eye witness but she also has turned hostile and she speaks of the victim Seetabai committing suicide. The evidence of three witnesses is therefore inconsequential.

5. P.W. 4 – Anuradha Pimpale is the doctor who has endorsed the dying declaration certifying that at the time when the declaration was recorded the patient was in conscious condition and was able to give statement. He has proved the endorsement. P.W. 5 – Bhimrao Talbandhare is the Special Executive Magistrate who recorded the dying declaration as required by law. In his evidence he speaks of the patient stating that she was burnt by her husband by pouring kerosene on her person. This was heard by P.W. 4 also and both P.Ws. 4 and 5 in their substantial evidence say that they have heard the victim saying this. Special Executive Magistrate has deposed that he obtained the certificate of the doctor after recording of the dying declaration and endorsements are there. They are perused. It is obvious from the document Ex.21 which has been recorded in question and answer form, it bears all the certificates required by law and is truthful

depiction of the statement made by the dying patient in which the victim has very clearly stated that her husband poured kerosene on her body and put her on fire. The cause for so doing is also mentioned. The certificate of the doctor is duly proved. This is, therefore, a declaration which is made by a person on the death bed which is recorded as per the Criminal Manual. It is substantially proved by the maker of it. P.W. 5 and P.W. 4 have endorsed the certificate of consciousness and awareness on the certificate itself.

6. P.W. 6 – Tanaji Rathod is the police constable who took the muddemal to the Chemical Analyser. P.W. 7 – Baswant Patil is the Police Sub Inspector who recorded another statement of the witness where there is statement made by the victim that she was burnt by her husband. This statement also is recorded in proper manner. It bears certificates of the doctor and that the doctor has been examined who states that the certificate was given by him as depicted by the document. A perusal of this dying declaration with the dying declaration made before the Special Executive Magistrate will demonstrate that both declarations corroborate with each other on all material particulars. They are recorded by two different persons who have deposed before the Court that they did factually hear the patient saying so and there is therefore no reason why either of them be liable to be rejected. In face of such clear testimony given by the victim before the persons who are independent witnesses, there is no reason to interfere with the order of conviction merely because there is no eye witness or because there are certain minor negligible contradictions. In the result, therefore, therefore appeal fails and is dismissed.